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HOUSE OF REPRESENTATIVES
REPORT
101-279

COPYRIGHT FEES AND TECHNICAL AMENDMENTS ACT OF 1989

OCTOBER 13, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1622]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1622) to amend title 17, United States Code, to change the fee schedule of the Copyright Office, and to make certain technical amendments, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. PURPOSE OF THE LEGISLATION

The purpose of the proposed legislation is to change the fee schedule of the Copyright Office to account for the inflation that has occurred since the schedule was enacted by Congress in 1976, and to grant the Register of Copyrights the authority to adjust the fee schedule by regulation solely to reflect, at five-year intervals, increases in the Consumer Price Index. The bill also makes technical amendments to title 17 of the United States Code to correct minor errors in recently enacted public laws.

II. BACKGROUND

The Library of Congress and the Copyright Office requested an increase in the copyright fee schedule to account for the inflation that has occurred since Congress enacted the last fee increase in 1976. The current fee schedule was set by statute in the Copyright Act of 1976, title 17 of the United States Code. Inflation has cut the real price of the fees by 50 percent.

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Historically, the Copyright Office recoups the greater portion of its expenses from earned fees. Expenses not covered by fees are paid by taxpayers from general revenues. In the last decade, inflation has reduced the fee share of the Copyright Office budget to about 35 percent. During this same period, the Copyright Office has made productivity gains in processing an ever-increasing number of claims to copyright. The Copyright Office reports that since fiscal year 1979, the workload has increased by 47 percent—from 426,000 claims to 625,000 claims in fiscal year 1988. In the same time frame, the authorized staffing level has decreased 23 percent—from 641 to 495 employees.

The Copyright Office sought the fee increase to adjust for inflation and to restore a better balance between the percentage of its operating costs recouped from fees and from the general public, respectively. The Copyright Office does not recommend a 100 percent fee-based registration system, since the Office performs some valuable services not directly related to maintenance of the public record. Public information services, rulemaking, participation in the development of national and international copyright policy, and preparation of reports and studies for the Congress are among the services of a public nature performed by the Copyright Office, and the Committee can reasonably expect the taxpayers to shoulder some of this burden.

Enactment of H.R. 1622 would mean that the Copyright Office would receive approximately $14 million in fees—which would go to the U.S. Treasury—to off-set against an appropriation of approximately $19 million. Fees would account for about two-thirds of operating costs, and taxpayers would pay for one-third ($5 million).

The Committee recommends to the Appropriations Committees of the Congress that the Copyright Office be authorized to off-set against its appropriation the full amount of the earned fees from copyright services, as has been the case in the past. The Committee also holds the view that the Appropriations Committees should allow the Copyright Office to use a significant portion of the additional earned fee revenues to improve its service to authors, copyright owners, and the public in the following ways, among others: continue the International Copyright Institute program in order to encourage protection of American works abroad; reduce the processing time for issuance of a certificate of registration; reduce the excess work-on-hand in cataloging the registration records; reinstitute the mailing list service to inform interested members of the public of Copyright Office regulations and other copyright developments; and automate the card catalog of pre-1978 registrations.

The Committee notes that the Register of Copyrights is considering a change in regulations allowing group registration of magazines and newspapers. In the view of the Committee, such a regulatory change would be a positive step forward. The fee established for group registrations could be substantially less than the fee for an individual registration. In a similar vein, the Register could establish a condition of group registration of serials in the Library of Congress, requiring that publishers add the Library to their sub-

scription lists so that the Library would get two copies immediately upon publication.[1]

The bill also grants the Register of Copyrights authority to adjust the fee schedule for inflation at five-year intervals, beginning in 1995. Under this authority the same balance between user fees and costs to taxpayers would be maintained, and the Copyright Office's ability to make long-range automation plans will be improved.

Finally, the bill makes technical amendments to correct minor errors in recent public laws amending the Copyright Act. The public laws corrected are the Act of August 27, 1986, Public Law 99-397, 100 Stat. 848 (Low Power Television Station Act); the Act of October 31, 1988, Public Law 100-568, 102 Stat. 2853 (Berne Convention Implementation Act of 1988); and the Act of November 16, 1988, Public Law 100-667, 102 Stat. 3949 (Satellite Home Viewer Act of 1988). In each case, the technical amendment would be made effective retroactively to the date of enactment. None of these amendments affects the substantive rights of any individuals and therefore an exception to the normal rule that statutory changes should not be retroactive is possible.

III. Sectional Analysis

H.R. 1622 amends the Copyright Act of 1976, Title 17, United States Code as follows.

SECTION 1. SHORT TITLE

The short title of the proposed legislation is the "Copyright Fees and Technical Amendments Act of 1989".

SECTION 2. FEES OF COPYRIGHT OFFICE

Section 2 of the proposed legislation would amend section 708(a) of the Copyright Act of 1976 by doubling the fee schedule. The basic filing fee would be increased from $10 to $20. Other fees such as for issuance of a receipt for a deposit, for the recordation of a transfer of copyright ownership, for the notice of intention to obtain a compulsory license, and for the issuance of an additional certificate of registration, are also doubled by section 2.

In addition, new authority is granted to the Register of Copyrights to adjust the fee schedule at five-year intervals, beginning in 1995, to account for any inflation reflected in the annual average for the preceding calendar year in the Consumer Price Index released by the Bureau of Labor Statistics.

To allow the Copyright Office time to prepare for the change in the fee schedule, the new fees will take effect six months after the date of enactment. Registration claims and other requests for services received before the effective date are governed by the former fee schedule.

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[1] See letter to the Honorable Robert W. Kastenmeier from the Honorable Ralph Oman (dated July 20, 1989), reprinted in Appendix.

SECTION 3. TECHNICAL AMENDMENTS

Section 3 makes minor technical corrections to three public laws passed by the 99th and 100th Congresses as amendments to the Copyright Act of 1976. The public laws corrected are the Low Power Television Station Act, passed by the 99th Congress as the Act of August 27, 1986, Pub L. 99-397, 100 Stat. 848; the Berne Convention Implementation Act of 1988, passed by the 100th Congress as the Act of October 31, 1988, Pub. L. 100-568, 102 Stat. 2853; and the Satellite Home Viewer Act of 1988, passed by the 100th Congress as the Act of November 16, 1988, Pub. L. 100-667, 102 Stat. 3949. With one exception, all of the amendments correct errors in cross-references to section numbering or paragraph designation. One correction deletes an obsolete phrase in section 111(c) of the Copyright Act of 1976 relating to the cable reporting requirements eliminated by the Low Power Television Station Act.

The technical amendments are made effective as of the date of enactment of each respective public law.

IV. Statement of Legislative History

The Subcommittee on Courts, Intellectual Property, and the Administration of Justice held an oversight hearing on the functioning of the Copyright Office on March 16, 1989. Ralph Oman (the Register of Copyrights) provided testimony for the Copyright Office and the Library of Congress. During his testimony, the Register requested introduction of fee legislation to assist the Copyright Office to meet its legislative mandate.[2] Letters in support of the Register's position have been submitted by a broad cross-section of the copyright community, including the Recording Industry Association of America, the Motion Picture Association of America, the Computer and Business Equipment Manufacturers Association, the National School Boards Association, the Authors League of America, and various bar associations.

On March 23, 1989, H.R. 1622 was introduced by Subcommittee Chairman Robert W. Kastenmeier and the ranking minority Member of the Subcommittee, Mr. Moorhead.

On July 25, 1989, the Subcommittee marked up H.R. 1622. An amendment was offered by Mr. Sensenbrenner to increase filing fees to reflect the actual costs of filing (approximately $30.00). The amendment was defeated by voice vote. Then a quorum of Members being present, the bill was reported favorably by voice vote (no opposition being heard) to the full Committee. Seven additional cosponsors have been added to the bill: Mr. Crockett; Mr. Berman; Mr. Bryant; Mr. Cardin; Mr. Boucher; Mr. Sangmeister; Mr. Hughes; and Mr. Synar.

On October 3, 1989, H.R. 1622 was considered by the full Committee. After general debate, the bill was reported favorably to the full House, a quorum of Members being present, by voice vote with no opposition expressed.

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[2] See Hearing on Copyright Office and Copyright Royalty Tribunal Oversight before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the House Committee on the Judiciary, 101st Cong., 1st Sess. (1989).

V. Oversight Findings

The Committee makes no oversight findings with respect to this legislation. In regard to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

VI. Statement of the Committee on Government Operations

No statement has been received on the legislation from the House Committee on Government Operations.

VII. New Budget Authority

In regard to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the bill creates no new budget authority or increased tax expenditures for the Federal judiciary.

VIII. Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee feels that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

IX. Cost Estimate

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee agrees with the cost estimate of the Congressional Budget Office.

X. Statement of the Congressional Budget Office

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, and section 403 of the Congressional Budget Act of 1974, the following is the cost estimate on H.R. 4262, prepared by the Congressional Budget Office.

U.S. Congress
Congressional Budget Office,
Washington, DC, October 10, 1989.

Hon. Jack Brooks,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1622, Copyright Fees and Technical Amendments Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer, *Director.*

Congressional Budget Office Cost Estimate

1. Bill number: H.R. 1622.
2. Bill title: Copyright Fees and Technical Amendments Act of 1989.

3. Bill status: As ordered reported by the House Committee on the Judiciary, October 3, 1989.

4. Bill purpose: H.R. 1622 would amend section 708(a) of the Copyright Act of 1976 to double certain fees payable to the Copyright Office. In addition, the bill would authorize the Register of Copyrights to adjust the fee schedule at five-year intervals to account for inflation. The bill also would make technical corrections to Title 17 of the United States Code to correct minor errors in recently enacted public laws.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Direct Spending:					
Estimated budget authority					
Estimated outlays	−2				
Authorizations:					
Estimated authorization level		−7	−8	−8	−8
Estimated outlays		−7	−8	−8	−8

BASIS OF ESTIMATE: Assuming enactment of the bill on December 1, 1989, the new fee schedule would take effect on June 1, 1990. Some direct savings—about $2 million—would occur in fiscal year 1990 because, absent further legislation, the Copyright Office would not be authorized to spend the additional collections resulting from the increase in fees. Beginning in fiscal year 1991, additional collections would be $7 million to $8 million a year, but savings would be realized only if the amount appropriated for the Copyright Office is reduced to reflect the increased collections.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Douglas Criscitello.

10. Estimate approved by: C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

COMMITTEE VOTE

On October 4, 1989, the Committee reported favorably the bill, H.R. 1622, to the full House by voice vote, no objections being heard.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as H.R. 1622 SLS reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

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§ 106. Exclusive rights in copyrighted works

Subject to secions 107 through [118], *119,* the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

* * * * * * *

§ 111. Limitations on exclusive rights: Secondary transmissions

(a) * * *

* * * * * * *

(c) Secondary transmissions by cable systems

(1) * * *

(2) Notwithstanding the provisions of clause (1) of this subsection, the willful or repeated secondary transmission to the public by a cable system of a primary transmission made by a broadcast station licensed by the Federal Communications Commission or by an appropriate governmental authority of Canada or Mexico and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, in the following cases:

(A) where the carriage of the signals comprising the secondary transmission is not permissible under the rules, regulations, or authorizations of the Federal Communications Commission; or

(B) where the cable system has not [recorded the notice specified by subsection (d) and] deposited the statement of account and royalty fee required by subsection (d).

* * * * * * *

(d) Compulsory license for secondary transmissions by cable systems

(1) * * *

(2) The register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section, shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest by the Copyright Royalty Tribunal as provided by this title. The Register shall submit to the Copyright Royalty Tribunal, on a semiannual basis, a compilation of all statements of account covering the relevant six-month period provided by [paragraph (1)] *clause (1)* of this subsection.

(3) The royalty fees thus deposited shall, in accordance with the procedures provided by [clause 5,] *clause (4),* be distributed to those among the following copyright owners who claim that their works were the subject of secondary transmissions by cable systems during the relevant semiannual period:

(A) any such owner whose work was included in a secondary transmission made by a cable system of a nonnetwork television program in whole or in part beyond the local service area of the primary transmitter; and

(B) any such owner whose work was included in a secondary transmission identified in a special statement of account deposited under [clause (2)(A);] *clause (1)(A);* and

(C) any such owner whose work was included in nonnetwork programing consisting exclusively of aural signals carried by a cable system in whole or in part beyond the local service area of the primary transmitter of such programs.

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CHAPTER 7—COPYRIGHT OFFICE

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§ 708. Copyright Office fees

[(a) The following fees shall be paid to the Register of Copyrights:

[(1) on filing each application for registration of a copyright claim or a supplementary registration under section 408, including the issuance ~~of a~~ certificate of registration if registration is made, $10;

[(2) on filing each application for registration of a claim to renewal of a subsisting copyright on its first term under section 304(a), including the issuance of a certificate of registration if registration is made, $6;

[(3) for the issuance of a receipt for a deposit under section 407, $2;

[(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document of six pages or less, covering no more than one title, $10; for each page over six and each title over one, 50 cents additional;

[(5) for the filing, under section 115(b), of a notice of intention to make phonorecords, $6;

[(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, $10 for a document of six pages or less, covering no more than one title; for each page over six and for each title over one, $1 additional;

[(7) for the issuance, under section 601, of an import statement, $3;

[(8) for the issuance, under section 706, of an additional certificate of registration, $4;

[(9) for the issuance of any other certification, $4; the Register of Copyrights has discretion, on the basis of their cost, to fix the fees for preparing copies of Copyright Office records, whether they are to be certified or not;

[(10) for the making and reporting of a search as provided by section 705, and for any related services, $10 for each hour or fraction of an hour consumed;

[(11) for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.]

(a) The following fees shall be paid to the Register of Copyrights:

(1) on filing each application under section 408 for registration of a copyright claim or for a supplementary registration, including the issuance of a certificate of registration if registration is made, $20;

(2) on filing each application for registration of a claim for renewal of a subsisting copyright in its first term under section 304(a), including the issuance of a certificate of registration if registration is made, $12;

(3) for the issuance of a receipt for a deposit under section 407, $4;

(4) for the recordation, as provided by section 205, of a transfer of copyright ownership or other document covering not more than one title, $20; for additional titles, $10 for each group of not more than 10 titles;

(5) for the filing, under section 115(b), of a notice of intention to obtain a compulsory license, $12;

(6) for the recordation, under section 302(c), of a statement revealing the identity of an author of an anonymous or pseudonymous work, or for the recordation, under section 302(d), of a statement relating to the death of an author, $20 for a document covering not more than one title; for each additional title, $2;

(7) for the issuance, under section 706, of an additional certificate of registration, $8;

(8) for the issuance of any other certification, $20 for each hour or fraction of an hour consumed with respect thereto;

(9) for the making and reporting of a search as provided by section 705, and for any related services, $20 for each hour or fraction of an hour consumed with respect thereto; and

(10) for any other special services requiring a substantial amount of time or expense, such fees as the Register of Copyrights may fix on the basis of the cost of providing the service.

The Register of Copyrights is authorized to fix the fees for preparing copies of Copyright Office records, whether or not such copies are certified, on the basis of the cost of such preparation.

(b) In calendar year 1995 and in each subsequent fifth calendar year, the Register of Copyrights, by regulation, may increase the fees specified in subsection (a) by the percent change in the annual average, for the preceding calendar year, of the Consumer Price Index published by the Bureau of Labor Statistics, over the annual average of the Consumer Price Index for the fifth calendar year preceding the calendar year in which such increase is authorized.

[(b)] *(c)* The fees prescribed by or under this section are applicable to the United States Government and any of its agencies, employees, or officers, but the Register of Copyrights has discretion to waive the requirement of this subsection in occasional or isolated cases involving relatively small amounts.

[(c)] *(d)* All fees received under this section shall be deposited by the Register of Copyrights in the Treasury of the United States and shall be credited to the appropriation for necessary expenses of the Copyright Office. The Register may, in accordance with regulations that he or she shall prescribe, refund any sum paid by mistake or in excess of the fee required by this section.

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CHAPTER 8—COPYRIGHT ROYALTY TRIBUNAL

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§ 801. Copyright Royalty Tribunal: Establishment and purpose

(a) * * *

(b) Subject to the provisions of this chapter, the purposes of the Tribunal shall be—

(1) * * *

(2) to make determinations concerning the adjustment of the copyright royalty rates in section 111 solely in accordance with the following provisions:

(A) * * *

* * * * * * *

(D) The gross receipts limitations established by section [111(d)(2) (C) and (D)] *111(d)(1) (C) and (D)* shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the

exemption provided by such section; and the royalty rate specified therein shall not be subject to adjustment; and

* * * * * * *

§ 804. Institution and conclusion of proceedings

(a) With respect to proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in sections 115 and 116, and with respect to proceedings under section 801(b)(2) (A) and (D)—

(1) * * *

(2) during the calendar years specified in the following schedule, any owner or user of a copyright work whose royalty rates are specified by this title, or by a rate established by the Tribunal, may file a pension with the Tribunal declaring that the petitioner requests an adjustment of the rate. The Tribunal shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Tribunal determines that the petitioner has a significant interest, the Chairman shall cause notice of this determination, with the reasons therefor, to be published in the Federal Register, together with notice of commencement of proceedings under this chapter.

(A) * * *

* * * * * * *

(C)(i) In proceedings under section 801(b)(1) concerning the adjustment of royalty rates as provided in section [115,] *116,* such petition may be filed in 1990 and in each subsequent tenth calendar year, and at any time within 1 year after negotiated license authorized by section 116A are terminated or expire and are not replaced by subsequent agreements.

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APPENDIX

THE REGISTER OF COPYRIGHTS,
LIBRARY OF CONGRESS,
Washington, DC, July 20, 1989.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Intellectual Property, and the Administration of Justice, House of Representatives, Washington, DC.

DEAR CHAIRMAN KASTENMEIER: I would like to share with you some information about the efforts I have made to build a consensus in favor of the proposed increase in copyright service fees, including our consultations with the magazine publishers about group registration of their publications. I would also like to review alternative fee structure ideas that I have considered and the reasons why I would not recommend their adoption. Finally, I want to respond to Irwin Karp's proposal for a two-year grace period during which unregistered works would be entitled to statutory damages and attorney's fees.

In my efforts to build a consensus in support of the copyright fee increase, I have written to, and talked with, a long list of authors, users, educators, and copyright owners, to explain the need for the increase. And I think I have succeeded in building a consensus, even though there may be a few holdouts. I have received many letters of support from many different people—from individuals and corporations, including a most sympathetic letter from Garson Kanin, Robert Massie, and Peter Stone, representing the Authors League of America and its constituent guilds. The American Intellectual Property Law Association, representing the patent, trademark, and copyright bar, supports the fee increase, as do the RIAA, the MPAA, and CBEMA.

I have also tried to adjust Copyright Office regulations wherever possible to reduce any burden on small publishers and individual authors. I have great sympathy for the men and women who struggle to make a living by writing or composing. Let me mention some of the positive things Congress or the Copyright Office has done to ease the plight of authors, starting back in 1978.

Congress made the biggest change back in 1978 when it made registration voluntary. So a struggling artist does not have to register at all to get copright protection. Of course, the artist gets very valuable benefits for registering, and many of them do register.

The Copyright Office also allows individual authors to make a single registration for an unlimited number of their unpublished works by grouping them into a "collective" work. So a

writer of poems or short stories, or a photographer, can register a year's production for only one fee. This greatly eases the hardship on the struggling author.

Congress allowed individual authors to make group registrations for their published contributions to magazines within a calendar year or less. This option has become even more important since you eliminated the notice requirement in the Berne Implementation Act of 1988. These authors of poems, essays, and short stories can make group registrations for a calendar year or less, at their option.

I am also actively considering another change in our regulations that would allow group registration of magazines and newsletters. The publishers have asked for this privilege in the past, and I have been working with the acquisitions people in the Library of Congress and with the publishers to develop the outline of a proposal that gives benefits to the Library and the Copyright Office as well as the publishers. Based on these consultations, if you would encourage me to do so, I would recommend to the Librarian the issuance of a group registration regulation for serial publications—magazines, journals, and newspapers. Daily publications could be registered weekly on one application for one fee; weekly and monthly publications could be registered quarterly on one application for one fee. I have the authority to set a fee for a special service like group registration, and I may recommend a fee to the Librarian. You may be assured that the fee will still be substantially less than the fee if the group of works were registered individually.

As a condition of allowing this kind of group registration of serials, we would ask the publishers, as they have suggested, to add the Library of Congress to their subscription list so the Library will receive two copies immediately upon publication. When group registration is applied for on a quarterly basis, the publisher would submit one application and fee for all of the issues published weekly or monthly during the quarter.

By reducing paperwork headaches and compliance costs, this proposal would benefit small periodical publishers and publishers of newsletters, and, indirectly, their authors. It would benefit the Library of Congress, by getting publications to the Library faster than it gets them under the current arrangement. In that way, it would also benefit Congress.

I understand that if you would sanction this compromise proposal, the publishers would accept it and support H.R. 1622 in full. The publishers have acknowledged that doubling of the fee schedule is justified simply to adjust for the inflation since the last fee increase. I know of no publishers who object to the fee increase. However, the compromise I have described removes any concerns they may have about adoption of the five-year inflation adjustment authority.

Consideration of alternative proposals: As you know, Mr. Chairman, H.R. 1622 doubles the fee schedule because inflation has cut its value in half since you set the fees in the 1976 Copyright act. Even though the fee increase merely responds to inflation, I have given careful thought to possible alternatives. We have considered the possibility of a variable fee structure—that is, a different fee for different works. The first question of course is what is the

policy basis for the fee differential. If it is the potential or assumed value of the work, when and how is that value determined? If a cost-recovery basis is used, the higher fee may in fact fall on the individual authors.

The major problem is that variable fees for different works would be administratively unmanageable. In a volume operation like ours—now 650,000 items a year—determining different levels of fees would consume a significant amount of time all along the production line, often requiring correspondence, and thus increase rather than decrease costs. Variable fees might also result in time and effort spent by applicants trying artifically to avoid the higher priced categories. Also, I believe the policy of nondiscrimination is best. Often applications completed by individual remitters take much longer to examine—like pro se litigants before the court--since we often have to write to them to correct mistakes. (The Copyright Office deals with more non-expert remitters than does the Patent Office, for example, which recommends that applicants first seek the help of a patent attorney before filing.) On the other hand, large corporations who repeatedly do business with the Office have experienced personnel to handle filing. On a cost-recovery basis, therefore, the "ordinary citizen" remitters would pay higher registration fees.

My bottom line is that even at $20 a work, the copyright registration filing fee remains one of the biggest bargains in Washington. Our neighbor, Canada, charges $35 (Canadian) for copyright registration, and authors and copyright owners, in some ways, get less for their money. Under our system, registration entitles authors and copyright owners to a legal presumption of copyright validity which has seldom been rebutted in court. The authors can get statutory damages and attorney's fees if they register and their works are infringed. Registration also greatly facilitates business transactions in copyrighted works. And all of these benefits will cost only $20 a work or even less if the author opts for group registration. The authors get real value for their money.

This brings me to Irwin Karp's proposal for a two-year grace period (after creation for unpublished works and after publication for published works—which could mean four years for some works) within which an unregistered work remains entitled to attorney's fees and statutory damages. I have considered this proposal, and must oppose it because it would weaken the registration system. A strong registration system serves the public interest because it builds the collections of the Library of Congress, it facilitates commercial transactions relating to copyrighted works, and it assists the court in narrowing the issues that are litigated.

Statutory damages and attorney's fees are extraordinary remedies. No other country in the Berne Union allows statutory damages as a remedy for copyright infringement. Authors must prove actual damages. Statutory damages and attorney's fees constitute the primary incentive to make early registration of works. Since most works are infringed within a year or two of publication, a two-year grace period for published works largely destroys the incentive to make registration; if the work is not infringed during the two-year period, the author probably will not register. Also, timeliness is an essential feature of any good registration system to

ensure that the facts alleged are correctly stated, rather than reconstructed two (or four) years later in connection with a lawsuit. Above all, early registrtion is essential so that the Library of Congress can rely on the copyright deposits to build current, high quality collections for the benefit of the Congress and the public.

Even so, authors who delay in making registration are entitled to significant remedies: an injunction, actual damages and lost profits, and seizure of infringing articles. These are the remedies available in other Berne member countries. But I know that this answer won't convince Mr. Karp. He fought this same battle back in 1976 during copyright revision, and he lost then. And he's trying again.

Finally, I understand that the concept of a copyright fund has been suggested. Some portion of the additional revenue flowing into the Copyright Office, as a result of the fee increase, would be set aside in a fund for special projects. The benefit of this proposal would be that the fees earned by the registration system would definitely be used to accomplish specific improvements to the system that benefit authors.

One of the problems with the fund concept is the Copyright Office needs additional revenues to make up for inflation. We need these revenues simply to restore service cut because of insufficient funds and to improve service in the application processing system. While I will be seeking a one-shot injection of funds from the appropriations committees for automation of the Copyright Office card catalog, the greater need is an injection of funds to improve basic services. I also see a danger in creating a stand-alone fund; it could be the first step in the direction of an entirely self-financing system based on user fees. I would counsel against this trend as unfair to the authors. The public benefits from the system, and the taxpayers should be willing to pay their fair share to support the system.

Moreover, the appropriations committees would have to agree with any fund proposal, and I am reluctant to delay the fee increase pending an agreement on establishment of a special fund. I am confident that the authors would be happy to rely on your assurances that you will use your good offices to make certain that a sizable portion of the increased revenues will be used to benefit the copyright system. Your track record in the Appropriations Committee should reassure them on that score.

I am at your disposal, of course, but I hope that the information in this letter will enable you to mark up H.R. 1622 and report it favorably to the Judiciary Committee without amendment. I really think the copyright community supports us on this modest bill.

As always, I greatly appreciate your help and direction.

Sincerely,

RALPH OMAN,
Register of Copyrights.

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